

Ed Wright



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. SABBITT
ATTORNEY GENERAL

LAW LIBRARY
ATTORNEY GENERAL

January 27, 1978

The Honorable Ed Sawyer
President
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Re: 78- 14 (R77-259)

Dear Mr. Sawyer:

This is in response to your letter of August 10, 1977, wherein you asked the following:

1. May the Arizona State Justice Planning Agency expend monies to match a federal grant when a portion of those monies will be expended in or for the benefit of Colorado, Utah and New Mexico?
2. Is the Arizona Drug Control District authorized by law to operate in counties other than the four designated by the statute creating the district?
3. May Arizona be held liable for the conduct of agents of other states while they are using equipment purchased with the funds received in the grant to the Arizona State Justice Planning Agency?

I

It is clear that under Article 9, Sections 1 and 7, of the Arizona Constitution, money raised by public taxation may only be spent for public purposes. It is equally clear that public money may not be spent, even for public purposes, unless somebody, authorized by the Constitution and the law to do so, has made an appropriation therefor.

Mr. Ed Sawyer
January 27, 1978

2.

Section 1. . . . All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only.

Section 7. Neither the state nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to an individual, association or corporation. . . .

See Proctor v. Hunt, 43 Ariz. 198, 29 P.2d 1058 (1934).

The Arizona Justice Planning Agency has contributed \$39,640 in matching money toward the federal grant to the Quad-State Narcotics and Organized Crime Intelligence Network. The source of this money was an appropriation of some \$650,000 made by the 33rd Legislature to the agency to be used, according to Chapter 150, Subdivision 77, of the Laws of 1977, for federal grant matching funds. The remaining share of local matching funds (\$39,638) was provided by the Pima County Attorney's Office. We have not considered and therefore express no opinion on the authority of the Pima County Attorney to contribute county money.

If the contribution of funds by the Justice Planning Agency is for a public purpose, such a contribution is permissible under the laws of this state.

Public purpose has been defined as follows:

A public purpose. . . has for its objective the promotion of the general welfare of all of the inhabitants or residents within a given political division as, for example, a state, the sovereignty and sovereign powers of which are exercised to promote the public health, safety, morals, general welfare, security, prosperity, contentment and equality before the law of all the citizens of the state.

(Emphasis added.)

Green v. Frazier, 44 N.Dak. 395, 176 N.W. 11, aff'd 253 U.S. 233 (1920).

Mr. Ed Sawyer
January 27, 1978

3.

Thus, an expenditure of funds of the State of Arizona for the purpose of benefitting the citizens of Colorado, for example, would not be an expenditure of state funds for a public purpose and would clearly be prohibited.

If, however, the primary purpose of the expenditure of state monies is to benefit the people of the State of Arizona and the citizens of Colorado receive some incidental benefits as a result of the expenditure, the expenditure is for a public purpose and would not be prohibited.

The mere fact that some private interests may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public.

Green v. Frazier, Id.

In determining whether a proposed expenditure of public funds is constitutionally valid as being devoted to a public purpose, no hard and fast rule can be formulated; rather, each case must be decided (a) with reference to the object sought to be accomplished and (b) with reference to the degree and manner in which such object affects the public welfare. Town of Gila Bend v. Walled Lake Door Co., 107 Ariz. 545, 490 P.2d 551 (1971).

We are informed that the primary reason for Arizona's contribution to the quad-state project is to benefit Arizona and its people by the extra effort, resources and coordination resulting from the Strike Force's activities in combating the narcotics traffic problem and have therefore concluded that the expenditure by the Justice Planning Agency is lawful.

II

You have also asked whether the Arizona Drug Control District is authorized by law to operate in counties other than the four designated by the statute creating the district. A.R.S. § 41-2153(B) provides as follows:

B. The administrator, under the supervision of the council, shall:

1. Assist in the investigation and prosecution throughout the district of violations of the narcotics and drug abuse laws of this state. . . .

Mr. Ed Sawyer
January 27, 1978

4.

2. Cooperate with local, county, state and federal authorities engaged in enforcement of narcotics and drug abuse laws in carrying out the purposes of this chapter. . . .

The above cited provisions of the statute creating the district clearly indicate that the Legislature intended the Strike Force of the Drug Control District to operate within the counties making up the district. If, however, local, county, state and federal authorities desire to engage in cooperative efforts with the Strike Force, the Force may assist those authorities in locations in which the cooperating agencies have jurisdiction.

The Coordinating Council of the Drug Control District may also expand its own jurisdiction and include additional counties in the District under A.R.S. § 41-2152(C) which provides:

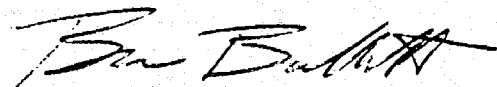
C. If at any time the majority of the council members determine that an additional county or counties should be included within the Arizona drug control district, the sheriffs and the county attorneys of such counties shall become members of the council.

III

Finally, you have asked whether the State of Arizona might in any way be held liable for the conduct of agents of other states while they are using equipment purchased by the quad-state administration in Arizona.

Due to the myriad factual situations that are possible, this office cannot give a specific response to your query other than to advise you that in any activity involving agents of the State of Arizona or property in which the state has an interest, the potential for liability may exist in a given factual situation.

Very truly yours,


BRUCE E. BABBITT
Attorney General

BEB:ls